STATE OF MICHIGAN

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

OFFICE OF FINANCIAL AND INSURANCE REGULATION

Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXX
Petitioner

v **File No. 120795-001-SF**

Blue Cross Blue Shield of Michigan
Respondent

Issued and entered
this 4th day of October 2011
by R. Kevin Clinton
Commissioner

ORDER

I. PROCEDURAL BACKGROUND

On April 22, 2011, XXXXX (Petitioner) filed a request for external review with the Commissioner of Financial and Insurance Regulation under Public Act No. 495 of 2006, MCL 550.1951 *et seq*. The Commissioner reviewed the request and accepted it on April 29, 2011.

The Petitioner is enrolled for health care coverage through the State of Michigan, a self-funded local government group. The plan, administered by Respondent Blue Cross Blue Shield of Michigan (BCBSM), is self-funded. Act 495 authorizes the Commissioner to conduct external reviews for state and local government employees who receive health care benefits in a self-funded plan. Under Act 495, the reviews are conducted in the same manner as reviews conducted under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq*.

The Commissioner notified BCBSM of the external review and requested the information used in making its adverse determination. The Commissioner received BCBSM's response on May 10, 2011.

The issue in this external review can be decided by a contractual analysis. The Commissioner reviews contractual issues pursuant to MCL 550.1911(7). This matter does not require a medical opinion from an independent review organization.

II. FACTUAL BACKGROUND

The Petitioner's health care benefits are defined in the State Health Plan *Benefit Guide*.

On October 26, 2010, the Petitioner, who has diabetes, obtained special shoes and inserts from XXXXX, a provider of durable medical equipment located in XXXXX. Because of the Petitioner's diabetes, the shoes and inserts are covered by BCBSM as durable medical equipment. XXXXX does not participate within the BCBSM network of providers. The provider charged $402.00. BCBSM approved $122.88 and, after applying a 20% coinsurance, paid $98.30 to the Petitioner.

The Petitioner appealed the amount BCBSM paid. A managerial-level conference was held, and BCBSM issued a final adverse determination on April 11, 2011, affirming its claims decision.

III. ISSUE

Is BCBSM required to pay an additional amount for the Petitioner's diabetic shoes and inserts?

IV. ANALYSIS

Petitioner's Argument

The Petitioner indicates that he obtained the shoes from XXXXX on October 26, 2010. He stated that he believed the business was a BCBSM network provider. Because his podiatrist participates with BCBSM and is affiliated with XXXXX, the Petitioner presumed that XXXXX was also a BCBSM participating provider.

Petitioner states that if he had known they were nonparticipating he would have gone to another supplier. The Petitioner received an explanation of benefits from BCBSM stating he owed $303.70. He maintains that since he was not aware of the nonparticipating status of the provider he should not be required to pay this amount.

BCBSM's Argument

In its final adverse determination, BCBSM wrote:

> We received you appeal request for diabetic shoes and inserts on 3/11/2011. Based on our review and your benefit package, it has been determined the claim payment amount is correct. No additional payment amount will be made.
>
> When you use a network provider for covered services, you'll have no out-of-pocket costs. However, if you use an out-of-network provider, you will be responsible for out-of-pocket costs equal to 20 percent of the approved amount,

> and possibly the difference between the provider's charge and the approved amount. You did not utilize a network provider for the services listed above.

Commissioner's Review

The *Benefit Guide* (page 10) provides:

> **Choosing a network provider**
>
> **Nonparticipating provider**
>
> Nonparticipating providers are providers who are not in the PPO network and do not participate in any BCBSM plan. If you receive services from a nonparticipating provider, in addition to the out-of-network deductible and copayments, you may also be responsible for any charges above BCBSM's approved amount. That is because providers who do not participate with BCBSM mat choose not to accept our approved amount as payment in full for covered services. You may be required to file your own claim.
>
> When you use nonparticipating providers, we will send you our approved amount less the out-of-network deductible and copayments. You are responsible for paying the provider.

Based on the provisions of the benefit guide, BCBSM paid the proper amount for the Petitioner's shoes and inserts, given that a non-network provider was used. BCBSM is not required to pay any additional amount even if the Petitioner was not aware that the provider was nonparticipating.

V. ORDER

The final adverse determination of April 11, 2011, is upheld. Blue Cross Blue Shield of Michigan is not required to pay any additional amount for the Petitioner's shoes and inserts.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than 60 days from the date of this Order in the circuit court for the county where the covered person resides or in the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of Financial and Insurance Regulation, Health Plans Division, P.O. Box 30220, Lansing, MI 48909-7720.